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November 20, 2007

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notification of *Ex Parte* Communication
MB Docket No. 07-42

Dear Ms. Dortch:

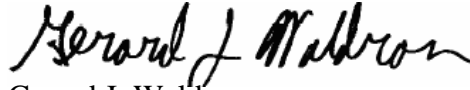
On November 19, 2007, Roger Goodell, Commissioner of the National Football League (the “NFL”), Frank Hawkins, Senior Vice President of Business Affairs, and I met in separate meetings with Commissioner Michael Copps and his legal advisors Rick Chessen and Scott Deutchman; Commissioner Jonathan Adelstein and his legal advisor Rudy Brioché; Commissioner Deborah Taylor Tate and her legal advisor Amy Blankenship; Commissioner Robert McDowell and his legal advisor Cristina Chou Pauzé; and Chairman Martin and Daniel Gonzales, Michelle Carey with the Chairman’s office, and Monica Desai, Chief of the Media Bureau.

During these meetings, the NFL representatives discussed the critical need (both in terms of consumer welfare and in terms of Congressionally-created goals of fostering diversity in programming sources) for a dispute resolution mechanism to resolve carriage disputes, especially involving vertically-integrated multichannel video programming distributors (“MVPDs”) and the substantial benefits of baseball-style arbitration as a tool to resolve these disputes. In particular, the NFL described its own experience with its independent video service, the NFL Network. As the NFL described, some MVPDs have shifted the NFL Network to an expensive premium service tier in an effort to force NFL fans to pay more for high-quality and highly rated football programming, while simultaneously giving their affiliated sports channels broader distribution on a basic service tier – and therefore a competitive advantage over the NFL Network.

Ms. Marlene H. Dortch, Secretary
November 20, 2007
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The attached materials were used in connection with certain of these meetings.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerard J. Waldron". The signature is fluid and cursive, with the first name "Gerard" being more prominent.

Gerard J. Waldron

Counsel to the National Football League

Attachments

cc: Hon. Kevin J. Martin
Hon. Michael J. Copps
Hon. Jonathan S. Adelstein
Hon. Deborah Taylor Tate
Hon. Robert M. McDowell
Amy Blankenship
Rudy Brioché
Michelle Carey
Rick Chessen
Monica Desai
Scott Deutchman
Dan Gonzales
Cristina Chou Pauzé

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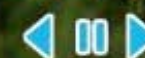
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21 F.C.C.R. 8989, 21 FCC Rcd. 8989, 39
Communications Reg. (P&F) 205, 2006 WL 2164659
(F.C.C.)

Federal Communications Commission (F.C.C.)

****1 IN THE MATTER OF TCR SPORTS
BROADCASTING HOLDING, L.L.P.,
COMPLAINANT
v.
COMCAST CORPORATION, DEFENDANT**

Adopted: July 31, 2006

Released: July 31, 2006

***8989** By the Commission: Commissioner McDowell
issuing a statement.

I. INTRODUCTION

1. TCR Sports Broadcasting Holding, L.L.P. ("TCR") has filed a program carriage complaint ("Complaint") against Comcast Corporation ("Comcast"). TCR, a video programming vendor, alleges that Comcast, a multichannel video programming distributor ("MVPD"), demanded a financial interest in return for carriage of TCR's programming in violation of Section 76.1301(a) of the Commission's rules and discriminated against TCR's programming in favor of Comcast's own programming in violation of Section 76.1301(c) of the Commission's rules.^[FN1] As discussed below, we direct that an Administrative Law Judge hold a hearing to resolve the factual disputes with respect to both claims and return a recommended decision and remedy to the Commission within 45 days of the stay of this *Memorandum Opinion and Hearing Designation Order* ("Order") being lifted, as further described herein.^[FN2] On our own motion, this *Order* is stayed until TCR decides whether to seek remedy under the conditions imposed by the Commission in the Adelphia-Time Warner Cable-Comcast transaction.^[FN3] If TCR declines to pursue arbitration under the conditions established in the *Adelphia*

Order, the stay will be lifted automatically without further action by the Commission.

***8990 II. BACKGROUND**

A. The Commission's Program Carriage Rules

2. Section 616 of the Communications Act of 1934, as amended (the "Communications Act"), directs the Commission to "establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors."^[FN4] Among other things, Congress directed that the regulations:

(1) include provisions designed to prevent a cable operator or other [MVPD] from requiring a financial interest in a program service as a condition for carriage on one or more of such operator's systems;^[FN5] [and]

* * *

(3) contain provisions designed to prevent a [MVPD] from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.^[FN6]

3. The Commission adopted rules in 1993 to implement Section 616.^[FN7] Specifically, Sections 76.1301(a) and (c) were added to the Commission's rules to prohibit a cable operator or other MVPD from requiring a financial interest in any program service as a condition for carriage of such service^[FN8] or engaging in conduct that unreasonably restrains the ability of an unaffiliated programming vendor to compete fairly by discriminating against such vendor on the basis of its nonaffiliation.^[FN9]

****2** 4. In addition to establishing rules governing program carriage, the *Second Report and Order* also established procedures for the review of program carriage complaints and appropriate penalties and remedies. The Commission adopted procedures by

which cases would be resolved on the basis of a complaint, answer and reply.^[FN10] Additional pleadings are generally not considered unless specifically requested by reviewing staff.^[FN11] The Commission recognized that “resolution of Section 616 complaints [would] necessarily focus on the specific facts pertaining to each negotiation, and the manner in which certain rights were obtained, in order to determine whether a violation has, in fact, occurred.”^[FN12] The Commission anticipated that the “staff would be unable to resolve most carriage agreement *8991 complaints on the sole basis of a written record....”^[FN13] In such cases, if the staff determines that the complainant has established a *prima facie* case but that “disposition of the complaint would require the resolution of factual disputes or other extensive discovery,” the staff is to notify the parties that they have the option of choosing Alternative Dispute Resolution (“ADR”) or an adjudicatory hearing before an Administrative Law Judge.^[FN14] The Commission stated that the appropriate relief for program carriage violations would be determined on a case-by-case basis, and that appropriate remedies and sanctions would include forfeitures, mandatory carriage, or carriage on terms revised or specified by the Commission.^[FN15]

B. TCR's Complaint Against Comcast

5. TCR is a regional sports network (“RSN”), controlled by the Baltimore Orioles, that owns the underlying rights to produce and exhibit Orioles games.^[FN16] Under Major League Baseball (“MLB”) rules, the Orioles have exclusive rights to telecast MLB games in, among other areas, Maryland, Virginia, and Washington, D.C. (*i.e.*, the Washington Nationals' home market).^[FN17] In March 2005, an agreement was reached among MLB, TCR, the Montreal Expos (now the Nationals), and the Orioles that provided that TCR would “have the sole and exclusive right to present any and all of the Nationals' and Orioles' baseball games not otherwise retained or reserved by Major League Baseball's national rights agreements....”^[FN18] For purposes of exercising these rights with respect to the Orioles and Nationals, TCR created and does business as Mid-Atlantic Sports Network (“MASN”).^[FN19]

6. Comcast is an MVPD that serves numerous communities in the Washington, D.C. metropolitan area. Comcast wholly owns Comcast SportsNet Mid-Atlantic L.P. (“CSN”), an RSN that, through a contract with TCR and the Orioles, holds the exclusive right to produce and exhibit certain Orioles

games on pay television through the 2006 season.^[FN20] In April 2005, TCR presented Comcast with a proposal for carriage of MASN, including non-exclusive rights to distribute Nationals' games for 2005 and 2006 and Orioles' games beginning in 2007.^[FN21] Comcast subsequently filed suit in Maryland state court, alleging that the carriage proposal from TCR, which indicated its decision to telecast Orioles' games on MASN beginning in 2007, violated the existing agreement between TCR and Comcast because it denied Comcast the right to match any third-party offer for the right to telecast Orioles' games beginning in 2007. Comcast's suit was dismissed at the trial court level for failure to state a claim. The Maryland Court of Appeals has granted review of the dismissal.^[FN22]

****3 *8992** 7. As further discussed below, on June 14, 2005, TCR filed its Complaint alleging that Comcast violated Section 76.1301(a) of the Commission's rules by demanding a financial interest in MASN and Section 76.1301(c) of the Commission's rules by discriminating against TCR's programming in favor of Comcast's own programming. TCR requests that the Commission order Comcast to provide carriage of MASN on all Comcast systems in the Washington area under the same terms and conditions that TCR has received from other MVPDs or such other terms and conditions as the Commission deems just and reasonable or terms and conditions established through binding independent arbitration.^[FN23] TCR requests that the Commission order that carriage on Comcast's systems of TCR's programming be implemented without delay (including deletion of a Comcast-affiliated programming service, if necessary) and without resolution of terms and conditions that can be ordered or implemented at a later date.^[FN24] TCR also requests that the Commission award substantial damages.^[FN25]

III. DISCUSSION

8. When filing a program carriage complaint, the burden of proof is on the programming vendor to establish a *prima facie* case that the defendant MVPD has engaged in behavior that is prohibited by Section 616 and the Commission's program carriage rules.^[FN26] As further discussed below, we find that TCR has met this burden with respect to both its financial interest and discrimination claims.

A. Financial Interest

9. After reviewing the pleadings and supporting documentation filed by the parties, we find that TCR has established a *prima facie* case under Section 76.1301(a). We also find that the pleadings and supporting documentation present several factual disputes, such that we are unable to determine on the basis of the existing record whether we can grant relief based on this claim.^[FN27] TCR alleges that Comcast has consistently attempted to extract an equity position in MASN and that, upon not being able to do so, Comcast has retaliated by refusing to carry TCR's programming. Thus, TCR alleges, Comcast has improperly made a financial interest in a programming service a condition of carriage. Specifically, TCR claims that Comcast and CSN, in discussions with MLB, offered to produce and exhibit Nationals' games on CSN or to create a new RSN with MLB and the Nationals in which Comcast or CSN would *8993 own a substantial equity position.^[FN28] TCR alleges that Comcast demanded a financial interest in any RSN that would carry Nationals' games in exchange for carriage of such RSN.^[FN29] Although TCR acknowledges that TCR and the Orioles did not negotiate directly with Comcast or CSN, TCR contends that Stephen Greenberg, an investment banker at Allen & Company "who purported to represent MLB," actually was acting on behalf of Comcast when he repeatedly "insisted on an equity position [in MASN] for Comcast."^[FN30] According to TCR, each of the RSN ownership scenarios proposed by Greenberg in discussions with TCR contemplated that Comcast would have a substantial equity interest in the new network, and TCR "understood that Greenberg spoke for Comcast" in setting forth such proposals.^[FN31] Comcast denies directly demanding a financial interest in MASN and claims that it did not retain Greenberg to act as its agent with regard to the transactions at issue.^[FN32]

****4** 10. In the *Second Report and Order*, the Commission emphasized that the statute "does not explicitly prohibit multichannel distributors from acquiring a financial interest or exclusive rights that are otherwise permissible," and thus, that "multichannel distributors [may] negotiate for, but not insist upon such benefits in exchange for carriage on their systems."^[FN33] The Commission stated, however, that "ultimatums, intimidation, conduct that amounts to exertion of pressure beyond good faith negotiations, or behavior that is tantamount to an unreasonable refusal to deal with a vendor who refuses to grant financial interests or exclusivity rights for carriage, should be considered examples of behavior that violates the prohibitions set forth in Section 616."^[FN34] We find that TCR has presented

sufficient evidence to make a *prima facie* showing that Comcast indirectly and improperly demanded a financial interest in MASN in exchange for carriage. We further find that the pleadings and documentation present several factual disputes as to whether Comcast's refusal to carry MASN is the result of Comcast's failure to obtain a financial interest in TCR's programming. Accordingly, commencing concurrently with the 10-day ADR election process discussed below, we direct an Administrative Law Judge to hold a hearing, issue a recommended decision on the facts underlying the financial interest claim and a recommended remedy, if necessary, and then return the matter to the Commission within 45 days.

B. Discrimination

11. After reviewing the pleadings and supporting documentation filed by the parties, we find that TCR has established a *prima facie* showing of discrimination under Section 76.1301(c). We also find that the pleadings and supporting documentation present several factual disputes, such that we are unable *8994 to determine on the basis of the existing record whether we can grant relief based on this claim.^[FN35] TCR alleges that Comcast has engaged in discrimination by refusing to carry TCR on its Washington metropolitan area cable systems while continuing to carry CSN.^[FN36] TCR argues that without carriage by Comcast, it will be impossible for MASN to reach the necessary level of subscribership to achieve long-term financial viability, and that Comcast's refusal to carry MASN thus restrains TCR from competing fairly.^[FN37] It is TCR's contention that Comcast's refusal to carry TCR's programming is a retaliatory action in response to MLB's award of the Nationals' distribution rights to TCR.^[FN38] TCR submits evidence indicating that, in addition to refusing to carry MASN, Comcast also sent letters to other MVPDs claiming that TCR and the Orioles were violating the terms of contracts with CSN and threatening to sue the MVPDs for interference of contract if they were to negotiate with TCR.^[FN39] TCR contends that other MVPDs are wary of entering negotiations in light of the letter sent to them by Comcast.^[FN40] Comcast argues that its decision not to carry MASN is driven not by the vendor's nonaffiliation, but instead by Comcast's pending lawsuit against TCR,^[FN41] concerns about the displacement of existing programming services from Comcast's lineup,^[FN42] and concerns regarding the unknown content of MASN programming other than baseball games and outside of the baseball season.^[FN43] Comcast states that it carries

nonaffiliated RSNs in seven markets in which it also carries a Comcast-affiliated RSN.^[FN44] Comcast claims that its decision not to carry MASN is supported by the fact that other local MVPDs also have declined to carry MASN.^[FN45]

****5** 12. In the *Second Report and Order*, the Commission stated that it would identify specific behavior that constitutes discrimination on a case-by-case basis “because the practices at issue will necessarily involve behavior that must be evaluated within the context of specific facts pertaining to each ***8995** negotiation.”^[FN46] Any complainant alleging a violation of Section 616(a)(3)'s prohibition on discrimination must demonstrate that the alleged discrimination is “on the basis of affiliation or nonaffiliation” of a vendor, and that “the effect of the conduct that prompts the complaint is to unreasonably restrain the ability of the complainant to compete fairly.”^[FN47] After reviewing the pleadings and supporting documentation filed by the parties, we find that TCR has established a *prima facie* case under Section 76.1301(c). We also find that the pleadings and supporting documentation present several factual disputes as to whether Comcast discriminated against MASN in favor of Comcast's own RSN. Accordingly, commencing concurrently with the ADR election process discussed below, we direct an Administrative Law Judge to hold a hearing, issue a recommended decision on the facts underlying the discrimination claim and a recommended remedy, if necessary, and then return the matter to the Commission within 45 days.

C. Referral to Administrative Law Judge or Alternative Dispute Resolution

13. We direct that an Administrative Law Judge resolve the factual disputes with respect to both claims and return a recommended decision and a recommended remedy, if necessary, to the Commission within 45 days of the stay of this *Order* being lifted. Pursuant to Section 76.7(g)(2) of the Commission's rules, TCR and Comcast will have ten days following the lifting of the stay of this *Order* to elect to resolve this dispute through ADR.^[FN48] Each party will notify the Commission, in writing, of its election within 10 days of release of this *Order* and, in the event that ADR is chosen, will update the Commission monthly on the status of the ADR process.^[FN49] If the parties elect to resolve the dispute through ADR, the 45-day period for review by an Administrative Law Judge will be tolled. In the event that the parties fail to reach a settlement through the

ADR process, the parties shall promptly notify the Commission in writing, and the 45-day period will resume upon receipt of such notification.

14. Upon receipt of the Administrative Law Judge's recommended decision and remedy, the Commission will make the requisite legal determinations as to whether Comcast has demanded a financial interest in TCR's programming in exchange for carriage in violation of Section 76.1302(a) or has discriminated against TCR's programming in favor of Comcast's own programming, with the effect of unreasonably restraining TCR's ability to compete fairly in violation of Section 76.1302(c). If necessary, the Commission will then decide upon appropriate remedies. The Commission will issue its decision not more than 60 days after receipt of the Administrative Law Judge's recommendations, which may be extended by the Commission for one period of 60 days.

****6** 15. We note that the Commission recently approved a series of license assignments and/or transfers of control by Adelphia Communications Corporation, Time Warner Cable and Comcast.^[FN50] The Commission imposed remedial conditions including a commercial arbitration condition as an alternative for RSNs unaffiliated with any MVPD to the program carriage complaint procedures. An unaffiliated RSN that has been denied carriage by Comcast may submit its carriage claim to arbitration within 30 days after the denial of carriage or within ten days after the release of the *Adelphia Order*. On our own motion, we stay this *Order* pending TCR's decision whether to pursue the arbitration option afforded it in the *Adelphia Order*. In the event TCR declines to pursue arbitration under the conditions established in the *Adelphia Order*, the stay will be lifted automatically without further action by the Commission.

***8996** IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED**, that TCR Sports Broadcasting Holding, L.L.P.'s Complaint against Comcast Corporation is **DESIGNATED FOR HEARING** at a date and place to be specified in a subsequent order by an Administrative Law Judge.

17. **IT IS FURTHER ORDERED**, that pursuant to Section 616 of the Communications Act of 1934, as amended, [47 U.S.C. § 536](#), and [47 C.F.R. §§ 76.1300-1302](#), TCR Sports Broadcasting Holding, L.L.P. and Comcast Corporation submit to the Commission, in writing within ten days of the stay of

this *Order* being lifted, their respective elections as to whether each wishes to proceed to Alternative Dispute Resolution and, in the event that Alternative Dispute Resolution is chosen, will monthly update the Commission on the status of that process.

18. **IT IS FURTHER ORDERED**, that the Administrative Law Judge, within 45 days of the lifting of the stay of this *Order*, will make and return to the Commission a recommended decision on the following factual questions:

- (1) Did Comcast Corporation demand a financial interest in the programming of TCR Sports Broadcasting Holding, L.L.P. in exchange for carriage of such programming?
- (2) Did Comcast Corporation discriminate against TCR Sports Broadcasting Holding, L.L.P.'s programming in favor of Comcast Corporation's own programming?

19. **IT IS FURTHER ORDERED**, that the Administrative Law Judge, within 45 days of the lifting of the stay of this *Order*, will return to the Commission a recommended remedy, if necessary.

20. **IT IS FURTHER ORDERED**, that if the parties elect Alternative Dispute Resolution, the period for Administrative Law Judge review shall be tolled, until such time as the parties notify the Commission that they have failed to reach a settlement through Alternative Dispute Resolution.

****7 21. IT IS FURTHER ORDERED**, that this hearing will be governed by the rules of practice and procedure pertaining to the Commission's Hearing Proceedings, [47 C.F.R. § § 1.201-1.364](#), subject to the Administrative Law Judge's discretion to regulate the hearing.

22. **IT IS FURTHER ORDERED**, that all Discovery shall be conducted in accordance with [47 C.F.R. § § 1.311-1.325](#), subject to the Administrative Law Judge's discretion.

23. **IT IS FURTHER ORDERED**, that the Chief, Enforcement Bureau will be a party to the proceeding and will determine its level of participation.

24. **IT IS FURTHER ORDERED**, that the Secretary of the Commission shall cause to have this Order published in the Federal Register.

***8997 25. IT IS FURTHER ORDERED**, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send copies of this Order to all parties by certified mail,

return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

***8998 STATEMENT OF COMMISSIONER
ROBERT M. MCDOWELL**

*Re: TCR Sports Broadcasting Holding, L.L.P.,
Complainant v. Comcast Corporation,
Defendant; Memorandum Opinion and Hearing
Designation Order, CSR-6911-N*

Today's Order will provide the parties in this case with an expeditious path here at the Commission for resolution of their differences. As I have stated previously, speedy resolution of carriage disputes is critical, especially where regional sports networks are concerned. The paths we have outlined in the Adelphia Order and in this Order both provide the opportunity to settle the dispute between TCR and Comcast well before the next baseball season begins. The best solution would be for the parties to reach an accord on their own. If they fail to make a deal, however, the Commission's orders provide two alternative venues to reach a final determination on carriage of the Washington Nationals games. One way or the other, a decision will be made.

I see today's action as a positive first step towards reforming the procedures for enforcement of our program carriage rules. I applaud the Commission's commitment to improving these procedures and especially thank the Chairman for his leadership in bringing this Order before us.

FN1. See [47 C.F.R. § § 76.1301\(a\), \(c\)](#).

FN2. Concurrent with the Complaint, TCR also filed an Emergency Petition for Temporary Injunctive Relief ("Petition") requesting the Commission to mandate carriage of TCR's programming immediately on Comcast systems in the Washington metropolitan area. Absent a finding of a violation of the program carriage rules, we have no basis to order carriage of TCR's programming on Comcast's Washington Metropolitan area cable systems. Accordingly, we defer consideration of this Petition pending resolution through Alternative Dispute Resolution (discussed below) or a recommended decision from an Administrative Law Judge.

FN3. *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation, Assignors to Time Warner Cable, Inc., et al.*, Memorandum Opinion and Order, MB Docket No. 05-192, [FCC 06-105 \(rel. July 21, 2006\)](#) (“*Adelphia Order*”).

FN4. [47 U.S.C. § 536](#). Section 616 was added to the Communications Act by the Cable Television Consumer Protection and Competition Act of 1992, [Pub. L. No. 102-385, 106 Stat. 1460 \(1992\)](#).

FN5. [47 U.S.C. § 536\(a\)\(1\)](#); *see* [47 C.F.R. § 76.1301\(a\)](#) (implementing financial interest provision).

FN6. [47 U.S.C. § 536\(a\)\(3\)](#); *see* [47 C.F.R. § 76.1301\(c\)](#) (implementing discrimination provision).

FN7. *See* [47 C.F.R. § § 76.1300 -- 76.1302; Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992 and Development of Competition and Diversity in Video Programming Distribution and Carriage](#), 9 FCC Rcd 2642 (1993) (“*Second Report and Order*”).

FN8. [47 C.F.R. § 76.1301\(a\)](#).

FN9. [47 C.F.R. § 76.1301\(c\)](#).

FN10. *See* [47 C.F.R. § 76.1302\(c\), \(d\), \(e\)](#).

FN11. *See* [47 C.F.R. § 76.7\(e\)\(2\)](#); *see also* [47 C.F.R. 76.1302\(a\)](#).

FN12. [Second Report and Order](#), 9 FCC Rcd at 2648.

FN13. *Id.* at 2652.

FN14. *Id.* at 2656.

FN15. *Id.* at 2653.

FN16. Complaint at 2.

FN17. *See* Complaint, Exh. 1. Specifically, the Orioles' home television territory includes Maryland, Washington, D.C., Virginia, Delaware, seven counties in West Virginia, the York/Harrisburg/Lancaster Pennsylvania ADI and eastern North Carolina, including Winston-Salem, Greensboro and Charlotte. *Id.*

FN18. *Id.*

FN19. Complaint at 1.

FN20. Answer at 43.

FN21. Complaint at 21. Under TCR's proposal, Comcast would pay a per subscriber fee for carriage of MASN but would not own any part of it. *Id.*

FN22. In the suit, Comcast alleges that CSN had the right to negotiate exclusively with TCR for an extension of the 1996 agreement in which the Orioles granted to CSN the right to produce and exhibit Orioles' games on cable television throughout the 2006 season. Comcast contends that TCR, through its decision to telecast Orioles' games on MASN beginning with the 2007 baseball season, has denied Comcast the right to match any third-party offer for the right to telecast Orioles games upon expiration of the current agreement. CSN's suit also named MASN, the Orioles, and MLB as defendants. In October 2005, the circuit court dismissed the suit. To expedite resolution, the parties petitioned Maryland's Court of Appeals, the state's highest court, for a writ of certiorari. The court granted the petition and has scheduled oral argument. *Comcast SportsNet Mid-Atlantic, L.P. v. Baltimore Orioles, L.P., et al.*, No. 260751-V, *cert. granted* Mar. 9, 2006 (Md.).

FN23. Reply at 42.

FN24. *Id.* at 44-45.

FN25. *Id.* at 46.

FN26. [Second Report and Order](#), 9 FCC Rcd at 2654. In the Commission's only previous program carriage proceeding, [Classic Sports Network, Inc. v. Cablevision Systems Corp.](#), 12 FCC Rcd 22100 (CSB 1997), the parties reached an agreement and stipulated that the matter be dismissed with prejudice. The agreement was reached through ADR, following a decision directing an ALJ to hold a hearing to resolve the factual disputes and return a recommended decision to the Cable Services Bureau (“CSB”). *See* [Classic Sports Network, Inc. v. Cablevision Systems Corp.](#), 12 FCC Rcd 10288 (CSB 1997). The CSB afforded the parties ten days to elect to resolve the dispute through ADR; each party was required to notify the CSB of its election and, if both elected ADR, to update the CSB on the status of the ADR process. If both parties did not elect ADR, the CSB stated that it would make the requisite legal determinations upon review of the ALJ's recommended decision.

FN27. See [Second Report and Order, 9 FCC Rcd at 2655](#).

FN28. Complaint at 32-33.

FN29. *Id.* at 4.

FN30. *Id.* at 13. TCR asserts that Comcast, in connection with an unrelated matter, was a client of Greenberg's firm, and that it was apparent to the Orioles that Greenberg was acting as Comcast's agent for several reasons. First, TCR claims that the information Greenberg provided appeared to be Comcast internal data. Second, the manner in which Greenberg relayed Comcast's position suggested that he had been in direct contact with Comcast officials. *Id.* at 15, Exh. 4.

FN31. *Id.* at 14. See also Declaration of Joseph E. Foss, Complaint, Exh. 4 at 6-7 (alleging that "Greenberg stated that, because Comcast possessed infrastructure and an existing sports network, it would expect to be the dominant equity partner in the Comcast-proposed sports network...."); Complaint at 15 (alleging that Greenberg stated that "Comcast would accept nothing less than a 50 percent equity interest in any [RSN] that would include Orioles and Nationals games").

FN32. Answer at 9, 11, 14-15. Similarly, Allen & Company and Greenberg claim that they have represented only MLB in connection with this matter, and did not represent Comcast or serve as its agent. *Id.* at 11, Exh. 4.

FN33. [Second Report and Order, 9 FCC Rcd at 2649](#).

FN34. *Id.*

FN35. See [Second Report and Order, 9 FCC Rcd at 2655](#).

FN36. Reply at 6. TCR argues that Comcast cannot take the position that its subscribers have no interest in Nationals' games, because Comcast originally sought to obtain from MLB the right to produce and exhibit Nationals' games through CSN or, in the alternative, to obtain equity in whatever RSN was to televise Nationals' games. *Id.* at 7.

FN37. *Id.* at 28, Exh. 21 (Supplemental Declaration of Joseph E. Foss, stating that based upon internal calculations, TCR's viability will be significantly decreased without carriage by Comcast). TCR further alleges that Comcast's refusal to carry MASN not only restrains TCR's ability to compete, but could

drive the programmer out of business, thereby eliminating competition to Comcast's affiliated RSN, CSN.

FN38. Complaint at 21; Reply at 7.

FN39. Reply at 10. TCR also claims that Comcast has sent letters to members of Congress accusing TCR and the Orioles of being responsible for Nationals' games generally not being televised in the Washington area. Complaint at 26, Exh. 24.

FN40. Reply at 10. According to TCR, these letters are partly responsible for TCR's inability to reach agreements with MVPDs for carriage of MASN, with the exception of Starpower/RCN, DirecTV, and Verizon FIOS. Reply at 16. According to its website, MASN is currently being carried in the Washington metropolitan area by DirecTV, Cox Communications, Verizon FIOS, Starpower/RCN, and Charter Communications. See MASN Home Page, <http://www.masn.tv> (last visited July 16, 2006).

FN41. Answer at 21.

FN42. *Id.* at 28, Exh. 28.

FN43. *Id.* at 26. See also Letter from James L. Casserly, Counsel for Comcast, to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 29, 2005).

FN44. Answer at 18-19.

FN45. Answer at 19-21 (arguing that no other local MVPD has an interest in an RSN, and thus the failure to reach agreement with these providers "must be attributable to factors other than discrimination on the basis of affiliation").

FN46. [Second Report and Order, 9 FCC Rcd at 2648](#).

FN47. *Id.*; [47 C.F.R. § 76.1302\(c\)\(3\)](#).

FN48. [47 C.F.R. § 76.7\(g\)\(2\)](#).

FN49. *Id.*

FN50. *Adelphia Order*, MB Docket No. 05-192, [FCC 06-105 \(rel. July 21, 2006\)](#).

21 F.C.C.R. 8989, 21 FCC Rcd. 8989, 39 Communications Reg. (P&F) 205, 2006 WL 2164659 (F.C.C.)

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12 F.C.C.R. 22100, 12 FCC Rcd. 22100, 1997 WL 786703 (F.C.C.)

Federal Communications Commission (F.C.C.)

CLASSIC SPORTS NETWORK, INC.
v.
CABLEVISION SYSTEMS CORPORATION
JOINT STIPULATION OF DISMISSAL

Adopted: December 23, 1997

Released: December 24, 1997

***22100** By the Acting Chief, Cable Services Bureau:
1. Classic Sports Network, Inc. ("Classic Sports") filed a Complaint against Cablevision Systems Corporation ("Cablevision"), alleging that Cablevision demanded a financial interest in Classic Sports or a carriage exclusivity agreement or both in return for carriage of Classic Sports' programming on its systems in violation of [47 U.S.C. § 536](#) and the Commission's corollary regulations, [47 C.F.R. §§ 76.1300-1302](#).

2. Classic Sports and Cablevision, through their respective attorneys, have filed a request for dismissal of this matter, fashioned as a Joint Stipulation of Dismissal, in which they agree and stipulate that this matter be dismissed with prejudice.

3. The Commission encourages resolution of Program Carriage disputes through negotiations between the parties in an effort to avoid time-consuming, complex adjudication. This policy favoring private settlement and alternative dispute resolution conserves Commission resources and thereby serves the public interest.^[FN1]

4. Therefore, we find that the public interest is served by terminating this proceeding pursuant to the parties' Joint Stipulation of Dismissal.

5. Accordingly, **IT IS ORDERED** that the Complaint filed by Classic Sports Network, Inc. against Cablevision Systems Corporation **IS HEREBY DISMISSED WITH PREJUDICE**. This action is taken by the Chief, Cable Services Bureau,

pursuant to authority delegated by Section 0.321 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Acting Chief
Cable Services Bureau

FN1. See [Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992--Development of Competition and Diversity Video Programming Distribution and Carriage, Report and Order in MM Docket No. 92-265, 8 FCC Red. 3359, 3416 \(1993\)](#).

12 F.C.C.R. 22100, 12 FCC Rcd. 22100, 1997 WL 786703 (F.C.C.)
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